

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

Civil Action No. 2:22-cv-00125-JRG

**JURY TRIAL DEMANDED**

**CHARTER'S BRIEF IN OPPOSITION TO ENTROPIC'S MOTION FOR SUMMARY  
JUDGMENT OF NO LICENSE DEFENSE BASED ON DOCSIS**

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**TABLE OF EXHIBITS<sup>1</sup>**

<b>Exhibit</b>	<b>Description</b>
A	[REDACTED]). Dkt. 177-2.
B	Excerpts of the deposition transcript of [REDACTED], dated August 11, 2023. Dkt. 177-3.
C	Excerpts of the deposition transcript of Dr. Kevin Almeroth, dated August 23, 2023. Dkt. 177-4.
D	Opening Expert Report of Dr. Kevin Almeroth Regarding Licenses and Non-Infringing Alternatives, served on July 21, 2023. Dkt. 177-5.
E	Opening Expert Report of David O. Taylor Regarding Charter's Defenses, served on July 21, 2023.
F	Rebuttal Expert Report of Dr. Shukri Souri Regarding Licensing And Non-Infringing Alternatives, served on August 11, 2023.
G	Excerpts of the deposition transcript of [REDACTED], dated August 11, 2023. Dkt. 177-3.
H	Opening Expert Report of Dr. Shukri Souri Regarding Infringement of the '008, '682, '690, and '826 Patents, served on July 21, 2023.
I	CHARTER_ENTROPIC00214282
J	CHARTER_ENTROPIC00290917
K	Excerpts of the deposition transcript of [REDACTED], dated June 6, 2023.
L	Excerpts of the deposition transcript of [REDACTED], dated June 27, 2023.
M	CHARTER_ENTROPIC00244578
N	CHARTER_ENTROPIC00291564
O	CHARTER_ENTROPIC00476675
P	Excerpts of the deposition transcript of Dr. Kevin Almeroth, dated August 23, 2023. Dkt. 177-4.
Q	Excerpts of the Declaration of Dr. Kevin Almeroth Regarding Claim Construction, dated April 4, 2023.
R	Opening Expert Report of Dr. Richard A. Kramer Regarding Infringement, dated July 21, 2023.
S	United States Patent No. 8,792,008.
T	United States Patent No. 9,825,826.
U	CHARTER_ENTROPIC00369071
V	Excerpts of the deposition transcript of Dr. Shukri Souri, dated August 18, 2023.
W	Rebuttal Expert Report of Dr. Kevin Almeroth Regarding Non-Infringement, dated August 11, 2023.
X	Exhibit F from Entropic's 2nd Supplemental Infringement Contentions, dated June 23, 2023.

<sup>1</sup> Exhibits A–D were filed with Entropic's opening motion (Dkt. 177).

## **I. INTRODUCTION**

Entropic's infringement contentions rely on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Entropic's motion for

summary judgment (Dkt. 177, the "Motion" or "Mot.") should, therefore, be denied.

Entropic fails to cite a single case supporting its theory that a license can only be shown if

[REDACTED]

[REDACTED] Nor does it even attempt to offer an interpretation of the contract that would support

its fabricated element-by-element test. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **II. RESPONSE TO ENTROPIC'S STATEMENT OF THE ISSUE**

Charter accepts Entropic's statement of the question to be decided.

## **III. RESPONSE TO ENTROPIC'S STATEMENT OF UNDISPUTED FACTS ("RESP. SUF")**

1-2. Undisputed.

3. Undisputed, other than that

(Dkt. 177-2 at Section 1.2.)

4-5. Undisputed.

6. Disputed, argumentative, incomplete. Charter relies on two experts: Kevin Almeroth and David Taylor. (Dkt. 177-5 at ¶¶ 21–74; Ex. E at ¶¶ 112–50.) Their opinions are based in part on the testimony of Charter’s employees and other witnesses, who may testify at trial. (See Dkt. 177-3 at 157:6–14 [REDACTED])

\_\_\_\_\_.”); (Dkt. 177-5 at ¶¶ 33, 45, 59, 64, 70 (citing witness testimony).)

7. Disputed, argumentative, incomplete. Almeroth considered Entropic's infringement contentions in determining [REDACTED]. (Dkt. 177-4 at 21:24–22:2; Dkt. 177-5 at ¶¶ 34 [REDACTED])

8. Disputed, incomplete. Entropic's expert Shukri Souri states that he is

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Disputed, incomplete. [REDACTED]

[REDACTED]

10. Disputed, argumentative, incomplete. Almeroth's opinions on the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. Disputed, argumentative, incomplete. Almeroth's opinions on the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Disputed, argumentative, incomplete. Almeroth's opinions on the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

13. Disputed, argumentative, incomplete. Almeroth's opinions on the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. Disputed, argumentative, incomplete. Almeroth does not render any opinion on the

[REDACTED]

[REDACTED]

**IV. ADDITIONAL FACTS THAT WARRANT DENIAL OF ENTROPIC'S MOTION ("ADD. SOF")**

1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>3</sup> Emphasis added.

[REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

## **V. ARGUMENT**

### **A. Whether Charter Has A License Is A Question Of New York Contract Law, Not Federal Patent Law As Entropic Urges**

Entropic's motion asserts that, to prove [REDACTED]

[REDACTED]

[REDACTED] Entropic is wrong on the facts and the law. In particular, Entropic confuses the issue of patent infringement, which requires proof that every claim element is present in an accused device, [REDACTED]. The former is a question of federal patent law, while the latter is a question of contract interpretation under state law.

Every one of Entropic's cited cases relates to proving infringement based on compliance with a standard, not on interpretation of any license agreements. *See INVT SPE LLC v. Int'l Trade Comm'n*, 46 F.4th 1361, 1377 (Fed. Cir. 2022) ("Infringement can be proven based on an accused product's use of an industry standard if the asserted claim is standard essential."); *Godo Kaisha IP Bridge I v. TCL Commc'n Tech. Holdings Ltd.*, 967 F.3d 1380, 1383 (Fed. Cir. 2020) ("[W]e have endorsed standard compliance as a way of proving infringement."); *Optis Wireless Tech., LLC v. Huawei Techs. Co.*, No. 2:17-CV-123-JRG-RSP, 2018 WL 3375192, at \*2 (E.D. Tex. July 11, 2018) (denying motion to strike expert opinion because contentions adequately put defendant on notice of infringement theory). Obviously, when a plaintiff points to the defendant's compliance with a technical standard as a proxy for showing that the defendant's products infringe, the plaintiff must show that the standard meets every claim element. [REDACTED]

[REDACTED], which has nothing to do with what it takes to prove infringement under the patent laws.

The question presented, therefore, is one of contract interpretation under New York law:

[REDACTED]. In New York, "[t]o be entitled to summary judgment, the moving party has the burden of establishing that its construction of the [contract] is the only construction [that] can fairly be placed thereon." *Stormer v. Cnty. of Oneida*, 886 N.Y.S.2d 298, 299 (N.Y. App. Div. 2009) (quotation omitted). Where "ambiguity or equivocation exists and the extrinsic evidence presents a question of credibility or a choice among reasonable inferences, the case should not be resolved by way of summary judgment." *Mohawk*

*Valley Water Auth. v. State*, 74 N.Y.S.3d 430, 432 (N.Y. App. Div. 2018) (quotation omitted).

“[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.” *Greenfield v. Philles Records, Inc.*, 780 N.E.2d 166, 170 (N.Y. 2002).

[REDACTED]

[REDACTED]

[REDACTED] See *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2013 WL 2111217, at \*1 (W.D. Wash. Apr. 25, 2013) (patents that “must be practiced to accomplish the standard[] are called standard essential patents”). “To determine which patents are actually essential, a qualified technical expert must examine the declared essential patent and compare it to the relevant standard.” *Huawei Techs., Co. v. Samsung Elecs. Co.*, 340 F. Supp. 3d 934, 994 (N.D. Cal. 2018).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Charter does not need to go this far to defeat Entropic’s Motion. All that must be shown is that Charter’s interpretation is, at the very least, reasonable. Because it is, Entropic’s Motion must be denied.

Entropic does not cite a single case or point to any language in the [REDACTED]

[REDACTED]

[REDACTED]. In fact, Entropic’s

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1353 (Fed. Cir. 2010) (en banc) (“a written description of the invention” requires disclosure of “all its claimed limitations”). If, as Entropic argues, the same showing is required for the essentiality clause, then it would render the separate disclosure clause meaningless. “[A] court should not adopt an interpretation which will operate to leave a provision of a contract without force and effect.” *Amaranth LLC v. J.P. Morgan Chase & Co.*, 888 N.Y.S.2d 489, 493 (N.Y. App. Div. 2009) (quotation omitted); *see also LaSalle Bank Nat’l Ass’n v. Nomura Asset Cap. Corp.*, 424 F.3d 195, 206 (2d Cir. 2005) (“In interpreting a contract under New York law, words and phrases . . . should be given their plain meaning, and the contract should be construed so as to give full meaning and effect to all of its provisions.”) (quotation omitted).

Accordingly, Entropic’s interpretation of the [REDACTED] as requiring an element-by-element analysis of each asserted claim is not support by fact or law. And, because this interpretation underlies its entire argument, the Motion should be denied.

**B. Both Parties' Experts Provide Ample Evidence For A Jury To Conclude That the '690, '008, '826 and '682 Patents Are [REDACTED]"**

Genuine disputes of material fact about essentiality preclude summary judgment for Entropic. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**1. '690**

Almeroth opined that '690 claim 1 was essential to the [REDACTED]  
[REDACTED]) Entropic argues this showing is insufficient because claim 1 is no longer asserted and Almeroth did not expressly address the currently asserted claims, such as dependent claims 7 and 8. (Mot. at 11–12.) Because

[REDACTED]

[REDACTED]

---

<sup>5</sup> Almeroth's opening report relied on Entropic's contentions, because Entropic had not served its infringement expert reports at the time.

[REDACTED]

[REDACTED], and summary judgment on the '690 license defense should be denied.

Furthermore, even if—

[REDACTED]

**2. '008 / '826**

Each of the asserted claims of the '008 and '826 patents

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Entropic further argues that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Almeroth conducted the analysis required to determine whether the '008 and '826 patents are [REDACTED].” His testimony far exceeds what is necessary to create a genuine issue of fact. [REDACTED]

[REDACTED] cannot, according to Entropic, do so without infringing its '008 and '826 patents. If true, as it asserts, then Entropic's patents are

[REDACTED].

### 3. '682

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>7</sup> [REDACTED]

[REDACTED]

Entropic asserts that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Entropic asserts that Charter's ability [REDACTED]

[REDACTED] defeats Charter's license defense. (Mot. at 10–11.) As it did with the '008 and '826 patents, Entropic misreads the [REDACTED] [REDACTED]. *See, supra*. It also asserts that Almeroth relied on technical report, not a specification. (Mot. at 10.) Both assertions are [REDACTED] [REDACTED].) At the least, who is right on this issue presents a genuine dispute of material fact precluding summary judgment.

Thus, Entropic reliance on Charter's use of the [REDACTED] feature to prove infringement raises genuine disputes of fact between the experts as to whether the '682 patent is

licensed by the [REDACTED] Entropic's Motion as to the '682 license should be denied.

**C. Entropic's Reliance On [REDACTED]  
[REDACTED] Does Not Undermine The Essentiality Of The Asserted Patents**

Entropic argues that because it relied on some [REDACTED]  
[REDACTED] Charter's license defense is "far-fetched." (Mot. at 13–15.) Again, Entropic conflates the issues of infringement and license. The issue here is whether Entropic's patents are essential to DOCSIS Specifications, [REDACTED]  
[REDACTED]. (*Supra*, V.A.) Entropic's table also misleadingly omits its reliance on [REDACTED], such as Entropic's assertion that [REDACTED]  
[REDACTED]  
[REDACTED] In any event, Entropic's reliance on some [REDACTED] has absolutely no bearing on whether the its patents are essential for compliance with the DOCSIS Specifications. Essentiality is demonstrated by evidence that the asserted patents are necessary for any cable operator who chooses to comply with the relevant provisions of a DOCSIS Specification.

**VI. CONCLUSION**

Charter respectfully requests that the Court deny Entropic's motion for summary judgment.

Dated: September 25, 2023

Respectfully submitted,

/s/Daniel Reisner by permission Elizabeth Long

Deron R. Dacus  
State Bar No. 00790553  
The Dacus Firm, P.C.  
821 ESE Loop 323, Suite 430  
Tyler, TX 75701  
Phone: (903) 705-1117  
Fax: (903) 581-2543  
Email: ddacus@dacusfirm.com

Daniel L. Reisner  
David Benyacar  
Elizabeth Long  
Albert J. Boardman  
Melissa Brown  
ARNOLD & PORTER KAYE SCHOLER LLP  
250 West 55th Street  
New York, New York, 10019-9710  
Telephone: (212) 836-8000  
Email: daniel.reisner@arnoldporter.com  
Email: david.benyacar@arnoldporter.com  
Email: elizabeth.long@arnoldporter.com  
Email: albert.boardman@arnoldporter.com  
Email: melissa.brown@arnoldporter.com

Marc A. Cohn  
Amy L. DeWitt  
Paul I. Margulies  
ARNOLD & PORTER KAYE SCHOLER LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001-3743  
Telephone: (202) 942-5000  
Email: marc.cohn@arnoldporter.com  
Email: amy.dewitt@arnoldporter.com  
Email: paul.margulies@arnoldporter.com

***Attorneys for Defendant  
Charter Communications, Inc.***

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document and all attachments thereto are being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served September 25, 2023, on all counsel of record, each of whom is deemed to have consented to electronic service. L.R. CV-5(a)(3)(A).

/s/ Elizabeth Long  
Elizabeth Long

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]